

Court of Appeals - State of Washington - Division 1 - (#48662-4-1)

PAUL TRUMMEL, Appellant

v.

STEPHEN (aka Stefan) A. MITCHELL AND COUNCIL HOUSE, INC., Respondents

Oral argument held on 14 November 2003 at 9:30 am.

One Union Square, Seattle, WA 98101-1176

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Mary Kay Becker, Chief Judge

Marlin J. Appelwick, Judge

Ann Schindler, Judge

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*Nota bene.* This transcript, taken verbatim from the court tape recording of the proceedings on 14 November 2003, forms part of the public record. It faithfully represents the oral argument during those proceedings. A competent lawyer proofread the document against the tape recording to insure accuracy.

A dilemma arises from the trial court decision to censor names of Council House attorneys and directors despite them appearing in the public record. That prior restraint presents a serious ethical problem for a journalist: Does one publish a court transcript verbatim or alter that public record to comply with an irrational court order?

This illustrates the catch-22 that Judge James A. Doerty created in the trial court. He sent the author to jail for 111 days (25 days in solitary confinement) for publishing Council House attorneys' and directors' names. [*Metamorphosis*]

The author has decided to leave the transcript as a true record of the proceedings. He has omitted the name of the respondent's attorney from the inserted sub-headings to comply with the trial court ruling. The attorney's name still appears in the text as part of the court record.

Kafkaesque as this may seem, the author has tried to comply with an irrational (probably unlawful) trial court order until reversed by Court of Appeals. If Court of Appeals orders deletion of the attorney's name from its own verbatim transcript, with specific directions on the language to replace it, then the author will comply with that ruling. [*The Scab Family*]

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*William John Crittenden - Lead Appellate Counsel on Civil Contempt Issues*

May it please the Court. My name is William John Crittenden. I am the attorney for the appellant Paul Trummel. The trial Court threw my client out of his home and into the King County jail for almost four months based on content of his newsletter and his website. How did this happen? It happened because the trial Court made a long series of procedural statutory evidentiary and constitutional errors any one of which would require this Court to reverse.

The respondent would like this Court to believe that this case isn't even about free speech. It would like this Court to believe that this case is about a bunch of other stuff that my client allegedly did to people who aren't even parties. But the record clearly shows that the trial Court's original order and every order that followed from it was based on the trial Court's hasty and erroneous conclusion that the content of my client's publications constituted harassment because it upset people.

The main language of the statute 10.14.020 sub (2) clearly states that constitutionally protected activity is not harassment. This Court interpreted that statute in *State v Noah* and squarely held that free speech, no matter how upsetting and insulting, even allegedly defamatory, is constitutionally protected activity for purposes of the anti-harassment statute. It cannot be the basis for an anti-harassment order.

The trial Court has to find something other than constitutionally protected activity or an anti-harassment order can't be issued. If the Court had simply followed *State v Noah* in the plain language of the statute we wouldn't even be here. Contrary to the trial Court's main and critical holding my client's publications do not constitute harassment of Stephen Mitchell or anyone else.

So what about all this other stuff that my client allegedly did?

*Judge Mary Kay Becker - Chief Judge, Court of Appeals*

Any other stuff is conduct is it not?

*Crittenden*

Some of it's also speech arguably but anything other than the newsletter itself that we're talking about. For starters, everything else that he is accused of doing is inadmissible hearsay at this point. These are not facts that have been proven in a hearing that comports to due process. But setting that aside, these facts, these allegations, even if true, do not establish the essential statutory requirement set forth in the statute and in *Burchell* of a course of conduct directed at a specific person. More importantly, these allegations do not even begin to establish a course of harassing conduct directed at Stephen Mitchell.

Stephen Mitchell is the only anti-harassment petitioner in this case. Apart from a corporation which can't get an anti-harassment order, there are no other parties. If Stephen Mitchell isn't

being harassed this Court doesn't even have jurisdiction to do anything other than to dismiss this case, vacate every order issued by the trial Court and award my client his attorney's fees for having to resist these unlawful injunctions that have been in place for almost two years.

Now the trial Court committed so many errors in this case that I can't even begin to address them all, so I'm going to stop at this point and ask if the Court has questions.

*Becker*

Hough, the recent Supreme Court case, doesn't that answer your contention that people not parties can't be benefitted.

*Crittenden*

Yes, it does. I cited Hough originally for the proposition that you had to file, actually be a person who filed, a petition. The Supreme Court was a little bit more lenient on anti-harassment petitions and said you simply have to be a party. But it confirms what the Court said in the Pearce case is correct.

You can't get relief for someone who's not a party and I believe the exact language in the Hough case from the Supreme Court is "The Court has jurisdiction to afford relief between the parties as the facts warrant." In this case the only party is Stephen Mitchell and that is clearly shown by the fact that as soon as I pointed out that he is the only party, Mr Somerville did me the favor of revising the caption on his brief to show that I'm right.

*Becker*

Are there any other questions from the panel?

*Marlin J. Appelwick - Judge, Court of Appeals*

If the harassment order was valid as to Mitchell, would it stand on its own as far as the distance protection keeping him away from everybody else at Council House in any event?

*Crittenden*

No, because there is no nexus between the order and what it is allegedly based on. It is based on the idea that my client was harassing people with the content of a newsletter which doesn't have any geographic restrictions because it's now on the internet. There are a few people who have made allegations which, if true, might be the germ of a course of harassing conduct reference that specific person but only a small distance restriction on contact with that person would be appropriate. This Court addressed that requirement in Noah and said this is about keeping the harasser away from the victim, and, in the Noah case, Mr Noah had a penchant for trespassing and surveillance and this Court said 300 feet is necessary because we can't get you to behave at a shorter distance. Unfortunately . . .

*Appelwick*

If the Court had adopted 300 feet or even 200 feet wouldn't that effectively keep him away from the apartments of all the residents of Council House and so whether or not they are named in the protective order their apartments are isn't that harmless if anything?

*Crittenden*

Well, if that was what the trial Court did but the problem in this case, your honor, is that the original petition for anti-harassment didn't even request that relief. That was the actual determination that Mr Trummel needed to be thrown out of Council House was based on Judge Doerty's *sua sponte* determination that my client was so poorly behaved and so contemptuous that he wouldn't obey the narrowly tailored relief that was actually requested.

*Appelwick*

If that determination, discretionary as it is, is reasonable, isn't the removal from Council House reasonable because it is the only way to effectuate the separation?

*Crittenden*

If you assume, for the sake of argument, that he is harassing Mr Mitchell then as a consequence he would have to stay away from the other people. Yes that's true but you don't actually have any evidence of a course of harassing conduct directed at Mr Mitchell. If you look at all the declarations there is a smattering of other unpleasant interactions that my client allegedly had but none of them were with Mr Mitchell. Mr Mitchell . . .

*Becker*

Well, your case appears to rise and fall then on this question of whether or not the other harassment that your client directed against the other people in Council House is properly before the Court.

*Crittenden*

Allegedly directed at other people, your Honor.

*Becker*

But, let's just assume that the Court gets past that. I mean, let's look at this on the merits for a minute. Having looked at the record here I think that to describe Judge Doerty's actions as hasty or insensitive to the constitution or even hysterical, as you did in one portion of your brief, I think is inaccurate and I would pose to you the question that Judge Doerty poses that let's just assume that it's true here that Mr Trummel was wondering around in doorways with his ear against the doorways at 3 o'clock in the morning and that he was thrusting his face and forehead up against

other people at meetings and calling them obscene names, it seems to me that that is the proper subject of an anti-harassment order and exactly what should Judge Doerty have done to prevent Mr Trummel from conducting himself in this matter.

*Crittenden*

What Judge Doerty should have done, your honor, is granted him the continuance so he could have had an attorney.

*Becker*

That's a procedural answer. I'm asking

*Crittenden*

He also should have demanded that the person making these allegations actually become a party

*Becker*

Do you have any meritorious answers as opposed to procedural answers?

*Crittenden*

How could I have meritorious answers, your honor? My client never had an opportunity to develop the record.

*Becker*

Okay, so your position in this is wholly procedural?

*Crittenden*

No. My position is that you don't have any evidence that's competent because my client was basically railroaded by a bunch of hearsay. Sorry I can't give you any other answer but when there has been no opportunity to prepare a record, how can I give you a response on the merits? My client didn't get to present a defense.

*Appelwick*

All right. We'll reserve the rest of your time for rebuttal. Co-counsel proceed.

*Michele L. Earl-Hubbard, Davis Wright Tremaine - Amicus Curiae, Seattle Weekly*

May it please the Court, I am losing my voice. I'll try to talk as loud as possible. I don't want to make any concessions for the party but I think in terms of your honor's question.

*Becker*

Name for the record please.

*Earl-Hubbard*

Oh, certainly. Sorry your honor. My name is Michelle Earl-Hubbard. I represent *amicus curiae Seattle Weekly*. I'm media law attorney and the reason we're here today is because we do believe that the primary reason that the underlying order was entered was to restrict constitutionally protected free speech.

We don't think that all the other events were really what led Judge Doerty to enter the order that he did. We think when you read what he said in the transcripts, when you read the underlying petition, it is clear that what they were objecting to is Mr Trummel's newsletter and his various news gathering activity.

If you got beyond that question, just in answer to your question as to what they could do assuming they had non-speech activity but in fact could constitute harassment and I don't think you do on this record, the issue would not have been to restrain his free speech. It would have been the typical no contact order as to be one party on, and I think you would have to take into account the effect it would have on his free speech rights as well as issues of where he should live, etc. in terms of how broad a restriction you could impose.

The original restriction that was asked for was to have him no take access to common areas or something like that. You could restrain him from sticking his ear against doors, you could restrain him from knocking on doors at 3 am, you could do that sort of thing.

*Becker*

It appears that what Mr Trummel would have done in response to that would have been to start knocking on doors at 2 am.

*Earl-Hubbard*

Well, the problem is we don't have . . .

*Becker*

. . . there is quiet a course of harassing conduct here and it seems to me that minimizing it is not really helpful in terms to getting to grips with this because the Court seems to be left with your position being that when somebody is unpleasant as Mr Trummel starts putting his thoughts in newsletters that there is absolutely nothing that can be done to control him and that certainly can't be the answer in a civilized society.

*Earl-Hubbard*

But, your honor, I think that we are talking about two different things. One is could he be booted out of Council House. The other is could his newsletter be restrained. And the answer is under

our constitution, under RCW Title 1014, no you cannot restrain him as a basis of harassment. His newsletter cannot constitute harassment.

*Appelwick*

Haven't we already addressed that in Noah. I mean basically we said Noah couldn't gather the information or he couldn't conduct the same activities through third parties which he did and then he published that material on signs, and he was restrained.

*Earl-Hubbard*

In Noah, you had a 300feet restriction from the building and you had a 300 feet, I believe, from the one individual party and you were told that he was not surveil him. He was not to attempt to do those things he couldn't do through third parties. The problem with the Court's reading of the word "surveillance" which is what really got Mr Trummel flung in jail was his refusal to remove names from the internet which was an unlawful content-based restriction.

The problem with the definition of surveillance to be do not receive information from third parties, do not seek out information outside of the 300 feet range but from the world in general and then don't publish it on the internet. That is far broader a reading of surveillance than this Court put in place in Noah.

In Noah, you did have the issue of videotapes and cameras and the victim's awareness that they were being surveilled and that is part of what this harassment order is designed to protect. It is not designed to protect one's anonymity and right not to be written about. You have to appreciate the extent that you will be imposing a restriction if you say that to gather information and to report it can constitute harassment you are not just issuing a rule for Mr Trummel, you're issuing a rule for my client, every media organization and every person who walks in the state. That cannot be the reading of surveillance.

*Appelwick*

Your time is expired.

*Earl-Hubbard*

Thank you.

*Responding Attorney for Council House (Not named by Trial Court Order) See [Nota bene]*

May it please the Court, my name is Thane Somerville on behalf of Stefan [sic] Mitchell and the residents of Council House. Mr Trummel would like the Court to close its eyes to the forty-three declarations submitted by Council House residents that detailed the harassment that they suffered in Council House when Mr Trummel was a resident there. We have never argued and do not argue now that Judge Doerty's order was based solely on the harassment that Mr Mitchell

suffered and we argue that the Court was not required to close it's eyes to that evidence. It could enter relief based on it's equitable power and under 10.14 based on the declarations submitted to it by the other residents.

*Becker*

How do you respond to the argument that that was improper hearsay?

*Respondent*

In looking at the recent Hough opinion, if you look at what happened in that case, the Supreme Court affirmed the trial Court's broad authority to enter orders and in the Hough case the order was entered solely on the basis of attorneys' remarks at a hearing there was no affidavits, no declarations at all and the Supreme Court said that the Court still had authority to enter an order because it saw that the facts warranted relief. In Hough their was not a trial-type hearing where there were witnesses put on the stand and cross-examined. In Hough there was nothing more than an attorney's remarks at a hearing that led to an anti-harassment order being entered and the Supreme Court not only affirmed that position but reversed the Court of Appeal who said it was improper.

*Becker*

Well, as counsel points out, in Hough the dispute was between parties and apparently that is the wording of Hough. What do you find in Hough that indicates that an anti-harassment order can be brought on behalf of people who are really not even themselves parties or under the jurisdiction of the Court?

*Respondent*

I find it in Hough the broad language in the Supreme Court's opinion that says Courts have equitable authority to do substantial justice and litigation as the facts warrant. It is ridiculous to say that Judge Doerty was required to just ignore this evidence that was placed before him. I mean, as a technical matter, you know, Mr Trummel could have objected to that fact that these people weren't just named as parties, they had submitted declarations technically maybe there should have been named as parties. He could have objected and the response would have been, okay well let's just add them to the caption. That's the only difference here. I mean, Mr Trummel still was put on notice of the evidence that was being, you know, of the allegations being made against him. He received forty-three declarations. He received notice of the charges against him. The Court had personal jurisdiction over Mr Trummel. The Court had subject matter jurisdiction over the case and I don't believe that Judge Doerty was required to ignore that evidence. He didn't have to close his eyes to that evidence. Those declarations are properly before the Court and he can make an order based on that overwhelming amount of harassment conduct in those declarations. If the Court in Hough can enter an order based just on attorneys' remarks then a

Court can enter an anti-harassment order based on forty-three declarations that are placed before it.

*Becker*

Well, of course, a no-contact order is much less onerous than an order that ends up having the effect of evicting someone from the place that they live and normally I think when we're thinking of due process it depends on the magnitude of the interest at stake and what about the possibility that justice will go awry in the circumstances if there is no opportunity to cross-examine people who are making complaints or to somehow try to ferret out if these are really true allegations as opposed to being perhaps some kind of a campaign against an unpopular person.

*Respondent*

Due process does not require in every case that the right to cross-examination be given. You have to look at the Matthews factors.

*Becker*

That's what I'm talking about.

*Respondent*

And there is the private interest, the risk of erroneous deprivation, and the public interest and in this case the public interest, I think, when you look at the policy of 10.14 and the legislature's desire to give a speedy remedy to victims of harassment, it would be inconsistent with that policy to make them be subject to cross-examination every time that an anti-harassment policy is brought.

I think it's inconsistent with the position in Hough. I mean the Courts have brought authority just on their own notion. I mean, in Hough, the Court had authority on its own motion to enter an anti-harassment order, so obviously behind 10.14 to say in every case that cross-examination is required. In this case, if you look at the way this case started, it was Trummel that initially brought an anti-harassment motion against our client, Mr Mitchell.

There was a hearing on March 20th where a cross petition was made by Mitchell at that March 20th hearing for relief. Hough says that Doerty could have entered an order right then and there. But he didn't do that. With Trummel's due process rights in mind he refused to grant relief to Mr Mitchell at the March 20th hearing and said no, we need to have a separate hearing where you need to have a petition, where you need to put the evidence before me, give Trummel notice and an opportunity to respond.

And that's why the April 19th happened at all. He was given that opportunity to have notice and an opportunity to be heard and rebut the charges with a writ response and also he was given the

opportunity to rebut the charges of an oral response but he declined. So I think that, in this case, Mr Trummel's due process right to notice and an opportunity to respond to charges in a meaningful way in a meaningful manner was satisfied.

With regard to the argument about constitutionally-protected conduct, Judge Doerty's ruling was not just based on Mr Trummel's writings. It was based on a package of conduct that included the prowling through the hall, the listening into residents' apartments at three in the morning, verbally abusing and intimidating people inside Council House's common areas and the posting of offensive and defamatory attacks on the doors of the residents. It was not a content based restriction but was based on the package of harassing conduct that took place.

*Becker*

On the original order that seems to be the case and then later it was expanded to get into this area of surveillance which does seem to be the key point here at issue that because his writings evidenced his continuing interest and watching over of activities at Council House that he then could be prohibited from posting material on the website which in and of itself is constitutionally protected activity. That's clear.

*Respondent*

What we need to do first is to separate the no contact, no communication provisions from the internet restrictions that were placed a month later after Judge Doerty found him to be in contempt. This Court can separate those and still retain the no contact and no communication provisions that just do nothing but track the language of 10.14 if it does find that it was improper to place restrictions on the internet.

I think that the restrictions on the internet order said he cannot attempt to place Council House residents under surveillance. Judge Doerty found that his conduct of still posting these writings about the goings on of Council House was at least an attempt to keep them under surveillance under the order.

He entered in no restriction but just limited Trummel's ability to post the names and personal identifying information of those people. The order didn't restrict him from writing his publications and if you look at the internet today you'll see he's still a prolific writer on the internet about the goings, you know, about Council House but not naming the specific names of the residents. That's the only thing the internet restrictions did and, you know, I believe that was a reasonable response to Judge Doerty's finding that he, that Trummel, had wilfully violated the Court's order by keeping them under surveillance or at least attempting to keep them under surveillance.

*Becker*

Was there any discussion in a Court or . . . it's a little bit unclear to me exactly what that limitation consisted of. In other words, he couldn't post the names, the addresses or other personal identifying information. Was that ever discussed or developed later in terms of, like, or did he simply have to remove names and addresses or - and then leave the other - the rest of it intact or exactly how deeply did Judge Doerty get into editing this material?

*Respondent*

The personal identifying information could be name, address, phone number, social security number or photograph of Council House residents.

*Becker*

Clearly what he wanted to write about was Council House's administration and complain about it and suggest that it was not up to standards and that it was actually putting residents in jeopardy and so forth. Is it, in your opinion, possible to do that without in some indirect way identifying the administrator? I mean, in other words, if you're going to talk about the administration of Council House it seems to me you're talking about Mr Mitchell and it seems to me that if your objective is to not have anybody find out about Mr Mitchell that's impossible to do.

*Respondent*

I think that you could, one option would be to write about the Council House administrator. I don't think that would violate the terms of the order without naming his name. It just says you can't put his name, personal identifying information on the website. It doesn't say you can't write about Council House and the goings on there.

The case really is a consolidated appeal dealing with the initial anti-harassment order and the subsequent contempt issues dealing with the internet restrictions. The thing it is very important to realize that the initial anti-harassment order is not based on constitutionally protected conduct and that this Court can affirm the no contact provisions, no communication provisions that simply track the language of 10.14.

They make an argument that really speech can never be the basis for an anti-harassment order but that is not the case. 10.14 references that communication can be the basis for an anti-harassment order. It just can't be constitutionally protected communication. And in a private forum it can't be said that you have constitutionally protected right to go around posting and forcing defamatory and offensive attacks on the doors of people's residence. You don't, people don't have the right to come to others' homes and day after day post offensive attacks on your door. They don't.

*Becker*

Well, but wait a minute. I mean, isn't that something that goes on in America all the time? Don't political candidates go out and put leaflets which some may regard as offensive if they don't believe in the political views that are contained therein on people's doors, under their doors? Isn't that fairly common?

*Respondent*

Those political leaflets do not have an attack about the residents themselves. Those political leaflets don't say that I'm . . . [sic] that are not addressed to the resident that lives in the house where the leaflet is posted.

*Becker*

Or if you're attacking what, say, someone who is a political figure themselves and you go to their doorstep and you put it under their door, that certainly does occur.

*Respondent*

I think that's different in the situation we are dealing with here where you have a resident in an apartment building who is writing specific offensive attacks about those residents and posting them on their doors so that when they open up the door to their home they continually see this attack on them and their neighbors. I don't think you have a First Amendment right to do that.

It's clear that government and legislative encords [sic] can regulate conduct in a private forum and Council House is clearly a private forum. It is people's homes. They do not have to submit to Mr Trummel's writings on their door day after day that attack them. He does not have the First Amendment right to trump their rights to privacy and security within their homes.

When you look at a case like *Frisbee v. Schultz* from the Supreme Court where there is a regulation against picketing outside someone's home, picketing directed at someone's home and the Supreme Court in the United States says that you can make a regulation that protects people from being a captive audience within their home. That picketing made someone a captive audience. It forced them to listen to the picketing outside their home.

*Becker*

But nobody forces you to read up leaflets and throw it away.

*Respondent*

Nobody forces you to read it but when you continually have these postings on your door that have information about you. I mean, should a person have to, have to, have that on their door.

*Becker*

Would you say that even if Mr Trummel had not allegedly, or at least in the finding of Judge Doerty, engaged in harassing conduct. I mean, in other words, let's just say that you have, let's just say the Seattle Weekly, for example, decides to engage in a campaign of calling public attention to alleged deficiencies in the administration of Council House, for whatever reason, and post it regularly on the door of the residents. Is that something that can be the subject of an anti-harassment order?

*Respondent*

No. Then again that's not all we have here. We don't have just postings on the doors about the efficiency of the administration of Council House. We have personal attacks on people.

*Becker*

Not that I would accuse the Seattle Weekly of stooping to such levels but it isn't unheard of for journalism to become personal.

*Respondent*

But ... that's true, your honor. But I think that the difference is again that this is a continuing course of conduct that made these people fear to engage in activities within their home. It was not just the postings on the door. It was also, you know, the types of conduct, the prowling, the listening into people's doors, thank you.

*Crittenden*

I would like to talk about a couple of the issues. First starting with the due process question, the Hough case doesn't even address the issue. It's black-letter law that the cases that just simply don't raise arguments, don't address issues, are not authority. The authority for whether or not my client gets due process before he is turned out of his home is Goldberg.

Now there was some dispute as to exactly who Mr Somerville represents. Now he says on behalf of the residents of Council House. I've had a one and a half year running battle with Mr Somerville to find out exactly who his clients are. I'd like to point out that Mr Somerville's position in writing is that he does not represent the residents of Council House. His client is Stephen Mitchell. That is the only person who can be harassed in this case.

Now Judge *Becker*, you asked about the requirements of due process. Obviously, if you wanted to ignore Goldberg and start all over with the Matthews factors you're going to come to the conclusion that you have to give a real hearing to someone who is in jeopardy of being thrown out of their home. You get a hearing before they take away your welfare check. Obviously you get a hearing before you are parted from your belongings, your dog, your apartment for ever.

Now the surveillance issue is very interesting because the original finding of contempt based on surveillance was just wrong. The trial Court erroneously concluded that they'd had issued an order that prohibited surveillance through third parties. In fact he had not done so. He simply was mistaken about what his own order said.

The original finding of contempt is just simply not sustainable because what my client allegedly did doesn't even violate the order. And the argument for Mr Somerville is actually that the trial Court had the discretion to make an error of law which is an argument I'd never seen before. The fact is he does not have the discretion to be wrong about what his own order says. His order didn't prohibit surveillance to third parties. That contempt finding is void.

The trial Court later issued an order that was clearly content based. It said "get these names and identifying information off the internet". Unfortunately that is news. Names are news. The Florida Star says, "Names are news." In that case we're talking about the identity of a woman who was raped and the Court said, "The name is newsworthy. The name is content. You cannot restrain it." The same result's been reached talking about the safety of police officers in *Sheehan v. Gregoire* and *King County v. Sheehan*. The same result reached talking about abortion services providers and planned parenthood. You cannot tell people who are trying to talk about news or politics that they can't use names.

*Appelwick*

But if the information was illegally obtained in violation of a court order or a statute or a private . . .

*Crittenden*

You still couldn't restrain it, your honor. If you could determine that my clients was complicit in the underlying unlawful conduct of obtaining information you might have a violation of a court order and the remedy might be contempt of something else. But in the New York Times case we are dealing with stolen information from the Pentagon involving national security you can't restrain it. Period. Now I want to talk about the speech issue because really the problem here is that my opponent does not distinguish between content and content neutral regulation and you have to make that distinction. He keeps going back and forth and saying this is not about content, it's about defamatory and insulting attacks. Well are you looking at the content or not. Because if you're looking at the content you're looking at strict scrutiny under *Williams* and *Lorang* and a long line of Supreme Court cases.

*Appelwick*

Let's go back to the New York case. You can't restrain it in the hands of a third party but would you extend that holding. You can't restrain it in the hands of the thief from doing his own publication.

*Crittenden*

That issue, your honor, . . .

*Appelwick*

That's not what I recall the New York case said.

*Crittenden*

That issue, your Honor, I obviously haven't researched that issue because that issue isn't presented here. I don't know what the Court would rule. The Court might very well, it might say that, yes, you cannot restrain it. It might hold that you can.

*Appelwick*

The question would be whether he could be restrained from this own publication of improperly or illegally obtained information as opposed to whether the Weekly could be restrained from publishing the same information he had stolen and passed off all under New York Times.

*Crittenden*

First of all, your honor, what he was actually sent to jail for was publishing a publicly available list of the directors of Council House. That issue is simply not presented. He went to jail because he wouldn't take the information he got from the Secretary of State off the internet. So that issue is not raised.

Furthermore, there isn't even any admissible evidence whatsoever. There is simply supposition that he must have done something wrong because it showed up on his website. Well, the fact is there are people who were not restrained here who are on Mr Trummel's side of this argument about the administration of Council House and they have a First Amendment right to look around and write and find things out and communicate with anybody they want to.

There isn't even any evidence in the record as to what's going on here. We don't even know how the information got to Mr Trummel. Finally I want to point out that the Frisbee case again is content neutral and this court said in State versus Noah correctly, "The anti-harassment statute is content neutral. It cannot be used to restrain pure speech."

*Appelwick*

All right, that concludes our hearing on Trummel v. Mitchell.

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